IN THE HIGH COURT OF UTTARANCHAL AT NAINTIAL

Writ Petition No. 973 (M/B) of 2003

Chura Mal and others ……. Petitioners.

versus

Divisional Forest Officer
Tarai West Forest Division,
Ram Nagar-Nainital and
Another ……. Respondents

Coram: Hon. S.H.Kapadia, C.J.
Hon. M.M.Ghildiyal, J.
Dated: 04.11.2003

PC:

Petitioners are *Gaderiya* (गडरिया) by profession. For last fifty years they are earning their livelihood by grazing their cattle, goats and sheep in the forest area after obtaining permission from the Forest Department. They have been paying grazing fees. Grazing is a seasonal activity. They were permitted to graze upto 28.02.2002. When they applied for permits in October, 2002 for the next season commencing from November, 2002 to February, 2003, permits were refused. They are not allowed to graze their cattle. Therefore, writ petition has been filed against the Forest Department.

In the counter, it has been stated that in view of the spirit of Government Order dated 1st December, 2001, permission to graze cannot be granted to the petitioners as the Tarai West Forest (Division), Ramnagar in Uttranchal is Reserved Forest. It is argued that the Government order dated 1st December, 2001 indicates that the working plan formulated by the Government of Uttar Pradesh as far back as 1995, needs to be implemented and, therefore, permission has been refused.

Heard learned Advocate on both the sides.

At the outset, it may be mentioned that the Government order dated 1st of December, 2001 indicates that on account of the creation of Rajaji National Park which runs over an area from Dehradun to

Kalagarh, the forest area stands reduced. It is further pointed out that the State of Uttaranchal possesses 8000 sheeps. They do not have adequate grazing space for 8000 sheeps and, therefore, they cannot grant permission to the petitioners.

In such cases, the State has no strike balance between the livelihood of small petty grazers on the one hand and the protections of the forest area on the other hand. In this case, the petitioners have been earning their livelihood for last fifty years from the above activity. To deny them permission totally would put an end to their livelihood. Till today, there is nothing to indicate that in other Forests in the State of Uttaranchal, the Forest Department has not permitted grazers. There is no general policy taken by the State Government after 9th November, 2000 to ban grazing in all Forests within the state of Uttaranchal. Till such policy is taken, if so advised, the activity of private grazers can be regulated. They can be given temporary permission subject to certain area being demarcated, within which they can be permitted to graze their cattle with conditions like no looping would be allowed, prohibition of cutting of trees and prohibition on crossing of areas demarcated for grazing. Forest Department can impose any other condition as they deem fit.

In the light of this judgment, we are directing the Divisional Forest Officer, Tarai West Forest Division, Ramnagar to permit the petitioners to graze their cattle in the demarcated area on such terms and conditions as he deems fit, till the State takes appropriate policy decision. The Divisional Forest Officer is directed to grant permission in terms of this order within a period of three weeks from the date of communication of this order.

The petition is disposed of accordingly.

(M.M.Ghildiyal, J.) **(S.H. Kapadia, C.J.)**

AK.